

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MICHAEL D. TYSON,

Plaintiff,

DECISION AND ORDER

06-CV-6270L

v.

COMPASS GROUP
North America Division,

Defendant.

On August 8, 2006, defendant, Compass Group, North America Division, moved to dismiss plaintiff's second cause of action, asserting a claim under the New York State Human Rights Law, Exec. L. § 296, on the ground that the Court lacked subject matter jurisdiction over that claim because plaintiff had elected an administrative remedy by first filing with the New York State Division of Human Rights ("DHR").

In opposition to the motion, plaintiff's attorney filed a declaration stating, in part, that the DHR had dismissed plaintiff's charge for administrative convenience on August 18, 2006. Dkt. #9 ¶ 9.


Defendant's attorney has filed a reply conceding that "[b]ecause the [DHR] has dismissed Plaintiff's complaint on the grounds of administrative convenience, the election of remedies bar no

longer applies and she may now assert that same claim [under the Human Rights Law] in federal court.” Dkt. #10 ¶ 5. Defendant’s motion to dismiss the second cause of action is therefore denied.

CONCLUSION

Defendant’s motion to dismiss plaintiff’s second cause of action (Dkt. #3) is denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
January 26, 2007.